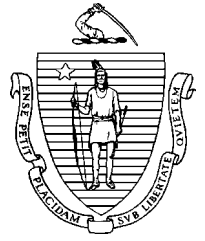




Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 527

IN THE MATTER OF JOSEPH DUGGAN

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Joseph Duggan ("Duggan") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On May 10, 1994, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Duggan. The Commission has concluded its inquiry and, on September 13, 1994, found reasonable cause to believe that Duggan violated G.L. c. 268A, §19.

The Commission and Duggan now agree to the following findings of fact and conclusions of law:

1a Duggan has worked for the Hull Lighting Plant ("department") for approximately the last 30 years as a general foreman, with the exception that between January 1993 and May 1993 he served as the acting manager. As either general foreman or acting manager Duggan was a municipal employee as that term is defined in G.L. c. 268A, §1.

2a As general foreman, Duggan supervises electrical line construction and maintenance. This a 40-hour a week job, and there is often overtime involved, in particular when there are storms.

3a Duggan has two sons that work for the Department, Steven and Matthew. Steven is a lineman. He began working for the Department in the early 1980s, and left after several years. He returned in either 1985 or 1986 and has remained there since. He is currently a lineman, but sometimes has worked as a lead lineman. Whether he is a lead lineman or not is determined by management based on seniority and experience.

Matthew is also a lineman. He has been with the department for eight or nine years, the last year on disability.

Duggan also has a brother, Robert, who worked as a lead lineman for the department until he retired eight or 10 years ago. In times of emergencies, when experienced lead linemen are needed, sometimes Robert will be called by management to work.

4a In September 1991, Duggan pointed out to Lighting Plant management that they had made a mistake in passing over Steven in filling the lead lineman position, where, according to Duggan, Steven had superior qualifications, including several years more experience, than the person being appointed. Duggan recommended to the Lighting Plant manager that Steven be promoted to the position of lead lineman. The manager did not accept that recommendation.

5a By letter dated January 19, 1993, town counsel advised Duggan that he could not participate in any department personnel matters involving his two sons' employment, and that the Lighting Plant Board of Commissioners ("Board") should either make those decisions or delegate them to another employee. Duggan

gave this letter to the Board. According to then Board Chairman Thomas J. Sullivan, the Board instructed Duggan to continue to serve as acting manager but to refer any discrete personnel issues involving his sons to the Board.

6a While acting plant manager between January 1993 and May 1993, Duggan did the following:

(a) He approved overtime for his son Steven (164 hours, \$3,177) and for his son Matthew (41 hours, \$661.74)^{1/}; and

(b) after a severe storm in March 1993, he hired his brother Robert to act as a lead lineman. Robert earned \$1,316.56 for 36 hours of work at that time. Duggan hired Robert for these duties even though two other linemen had been recently laid off for lack of work.^{2/}

7a Except as otherwise permitted by that section^{3/}, G.L. c. 268A, §19, in relevant part, prohibits a municipal employee from participating as such in a particular matter in which, to his knowledge, he or a member of his immediate family has a financial interest.^{4/}

8a The personnel decisions described above (recommending his son Steven for a promotion, approving overtime, hiring his brother) were particular matters.^{5/}

9a Duggan participated^{6/} in those particular matters by either making the decision himself or recommending action.

10a At the time he so acted, he knew that either a son and/or a brother, as the case may be, had a financial interest in the particular matter.

11a Therefore, by so acting, Duggan participated as a municipal employee in particular matters in which to his knowledge an immediate family^{7/} member had a financial interest, thereby violating §19.^{8/}

In view of the foregoing violations of G.L. c. 268A by Duggan, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Duggan:

(1) that Duggan pay to the Commission the sum of five hundred dollars (\$500.00) as a civil penalty for the violations of G.L. c. 268A, §19; and

(2) that Duggan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: June 14, 1995

^{1/} According to Chairman Sullivan, the Board approved the payrolls and, therefore, was aware of and, in effect, approved the overtime Duggan awarded to his sons.

^{2/} There is a dispute as to whether these other two linemen were qualified. Sullivan and Duggan assert they were not. The present Board chairman and manager say they were. In addition, although this was an emergency, Duggan had the time to pass on the decision as to who would be hired to the Board chairman. He did not do so.

^{3/} None of those exceptions applies.

^{4/} Section 19(b)(1) provides that it is not a violation of §19 if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. Pursuant to c. 268A, §24, such disclosures and authorizations are public records.

^{5/} “Particular matter,” any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{6/} “Participate,” participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

^{7/} “Immediate family,” the employee and his spouse, and their parents, children, brothers and sisters. G.L. c. 268A, §1(e).

^{8/} The fact that the Board knew of and was, in effect, approving Duggan’s granting overtime to his sons is a mitigating factor, although not a defense. The Commission has repeatedly observed that the §19(b)(1) disclosure and written authorization procedure is not a technicality. “The steps of the disclosure and exemption procedure ... are designed to prevent an appointing authority from making an uninformed ill-advised or badly motivated decision.” *In re Hanlon*, 1986 SEC 253, at 255. In any event, here, the Board did not even verbally approve of Duggan hiring his brother in March 1993.